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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 594

UNITED STATES OF AMERICA,
Petitioner,
v.
REPUBLIC OF FRANCE and COMPAGNIE GENERALE TRANSATLANTIQUE,
Respondents.

No. 595

TEXAS CITY TERMINAL RAILWAY COMPANY,
Petitioner,
v.
REPUBLIC OF FRANCE and COMPAGNIE GENERALE TRANSATLANTIQUE,
Respondents.

BRIEF IN OPPOSITION TO PETITIONS FOR CERTIORARI

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Both of the entitled causes arise out of the same proceeding in which the petitioners were claimants against the respondents, the Republic of France and Compagnie Generale Transatlantique. The two petitions make substantially the same arguments to this Court, with the Texas City Terminal Railway Company admittedly following the lead of the petitioner, the United States. This brief is submitted in opposition to both petitions.

Statement

The opinion of the Court of Appeals for the Fifth Circuit, 290 F. 2d 335, from which petitioners herein seek review by certiorari, arises out of a limitation proceeding filed in admiralty jointly by the Republic of France and Compagnie Generale Transatlantique, as owner and operator, respectively, of the ill-fated steamer GRANDCAMP. That vessel exploded at Texas City, Texas, on April 16, 1947, in the course of loading a cargo of fertilizer ammonium nitrate (FGAN) manufactured and supplied by the United States. The explosion was preceded by a fire and set off the chain of events which has since become known as the Texas City Disaster. Following the disaster the respondents herein filed limitation of liability proceedings in the District Court for the Southern District of Texas, pursuant to the provisions of the Limitation of Liability Act, 46 U.S.C. 182 *et seq.*, seeking exoneration from or limitation of liability for the consequences of the disaster.

Both of the petitioners herein filed claims in the limitation proceedings instituted by respondents. The United States claimed, primarily: as assignee of the disaster victims who received payments under the Texas City Relief Statute of 1955 (Chap. 864, P.L. 378, 84th Cong.) and also as successor to the Reconstruction Finance Corporation, for loss of warehoused cargo valued at $350,000. The other petitioner, Texas City Terminal Railway Company, is the only other claimant who remained in the limitation proceedings at the time of trial. All other claimants had withdrawn or their claims had been dismissed as having been assigned to the United States.[1]

[1] In a prior case arising out of the same explosion, *Dalehite v. United States*, 346 U. S. 15, to which the U. S. was a party but the respondents herein were not, this court held the United States, which

Except for a group of local firemen killed on board the vessel at the time of explosion, whose rights are governed by the Texas Death and Survival Statutes, all of the victims for whom the petitioner, the United States, speaks were injured on shore and not on the vessel, and are non-maritime claimants. The United States has claimed to recover against respondents not simply the $16,000,000 it paid out to these disaster victims, but approximately $70,000,000, representing the aggregate amount of the victims' asserted claims.

Upon the trial of the limitation proceedings the District Court, 171 F. Supp. 497, found the respondents herein negligent on several grounds and denied limitation as to both. The District Court also allowed a motion of the respondents, under the 56th Admiralty Rule, to implead the United States as a party liable over to the respondents without, however, going into the merits of the impleaded party's liability, if any, beyond the finding that negligence of the United States was not the sole cause of the disaster, as had been contended by the respondents.

The Court of Appeals, sitting *en banc*, found it unnecessary to review the trial court's findings of negligence, or the impleader of the United States, because, on the basis of the trial court's own findings of fact with respect to foreseeability, it concluded that as a matter of law the Texas test of foreseeability was not satisfied and the necessary element of proximate cause was not present. 290 F. 2d 395, 398-401. Accordingly, it directed the entry of judgments of exoneration in favor of the respondents. Judge Hutcheson dissented. 290 F. 2d 395, 401.

Thus, despite the magnitude of the disaster, the large number of assigned claims, the sovereign character of

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was the manufacturer and supplier of the cargo which exploded on board the GRANDCAMP, not liable to the disaster victims under the Federal Tort Claims Act, 28 U.S.C. secs. 1346 & 2674, since the conduct complained of against the United States fell within the discretionary exemption of the Act.

two of the parties, and the very substantial damage sums involved, these proceedings as they now stand are no more than another negligence case, albeit a sensationally big one, and the only legal point passed upon by the Court of Appeals was the application of the Texas law of proximate cause to the particular facts of the case. There is no reason for the Court of Appeals decision to be cited for anything else than its reading of the Texas law of proximate cause.

The Petitions Do Not Satisfy the Requirements of Rule 19

Viewed in its true posture this case does not present any special or important reasons for the granting of writs of certiorari, nor is there presented here any issue that meets the established criteria for review by certiorari within Rule 19 of this Court.

No federal question is involved, despite petitioners' effort to make the contrary appear. The decision of the Court of Appeals for the Fifth Circuit is not in conflict with the decision of any other court of appeals.[2] No

2. In fact the only comparable decision of another Court of Appeals, that of the Court of Appeals for the 4th Circuit in *A/S J. Ludwig Mowinkels Rederi v. Accinato, Ltd.* (The Ocean Liberty) 99 F. Supp. 201, rev. 199 F. 2d 134, 138; cert. den. 345 U. S. 992, held that there was no negligence on the part of the vessel owner who loaded a cargo from the same lot of material (fertilizer ammonium nitrate—FGAN, so called) which exploded on the GRANDCAMP, after the Texas City explosion, and in light of all the precautions thought to be necessary by federal and local officials by reason of that event. A fire and explosion on the OCEAN LIBERTY in the port of Brest, France, nevertheless occurred, much as at Texas City. The holding was predicated upon a finding that the explosion occurred as a result of spontaneous combustion of the cargo, a new product, a result which could not have been reasonably foreseen by the carrier. This same point was urged by these respondents upon the trial court in the instant case and rejected by it. The same point was urged on appeal but became academic because the Court of Appeals disposed of the case on the issue of proximate cause.

important state or territorial question has been decided in a way in conflict with applicable state or territorial law. And there has been no construction or interpretation, of any federal law which is called into question by the petitions for certiorari.

There is No "Question Presented" Under the Admiralty Extension Act

The petitioners for certiorari here have attempted to fill the vacuum which the true posture of the case presents under Rule 19 by creating a bogus question. The two "questions presented" by the brief of petitioner, the United States (page 2, U. S. brief), are merely two formulations of one proposition turned inside out. The United States postulates "questions" whether a shipowner is relieved from liability for foreseeable negligent injury to others, whether federal maritime law or local state law governs such a question, and whether the Admiralty Extension Act was overlooked. All of this boils down to one strained assertion: that if the Admiralty Extension Act, 46 U.S.C. 740, had been considered, a different law than that applied by the District Court and the Court of Appeals would have been applicable and would have produced a different result.

There are a number of reasons why this formulation is unsound.

First: The purported "questions" posed by the petitioners distort the issue before the Court of Appeals. That question was not whether "under general maritime law" a shipowner is relieved from the foreseeable result of negligent injury; it was rather whether under Texas law (or general maritime law) a shipowner or anyone else could be held liable to persons toward whom the law

of foreseeability created no duty; whether any duty existed giving rise to an action for its breach. This reproposition, not the bogus proposition posed by the petitioners, the Court of Appeals determined by reference to settled Texas precedent.

Second: The Court of Appeals, and for that matter the District Court, were not requested by the petitioners to apply the Admiralty Extension Act. That statute was not pleaded and was not placed in issue before either court, a matter which is conceded by petitioner, the United States, at page 17 of its brief. Consequently, there was no occasion to pass upon the point and no precedent has been set by the Court of Appeals with respect to such statute.

Third: The Admiralty Extension Act, which was enacted more than a year after this disaster occurred, did not purport to and could not create new substantive law retroactively. It merely made available admiralty jurisdiction and admiralty remedies for non-maritime torts not previously cognizable in admiralty. *United States* v. *Matson Nav. Co.*, 201 F. 2d 610, 617 (C.A. 9); *All America Cables & Radio* v. *The Viceppo*, 93 F. Supp. 923 (S.D. N.Y.). The application of the Admiralty Extension Act would in no way have altered the substantive law to be applied to this case, *i.e.*, the law of Texas. The Admiralty Extension Act did not convert non-maritime torts into maritime torts but simply brought both classes of torts into the admiralty forum for adjudication. In this case *all* claims were already in admiralty by virtue of the proceeding filed pursuant to the Limitation of Liability Act, which provides a form of proceeding long recognized as affording a concursus for all claims, maritime and non-maritime, arising out of the event as to which limitation of liability

is invoked. Similarly, the Limitation of Liability Act did not convert non-maritime torts into maritime torts, but simply brought both classes of torts into the admiralty forum for adjudication.

In *Richardson* v. *Harmon*, 222 U. S. 96, this Court, in construing the amendment of 1884 to the Limitation of Liability Act, held that non-maritime as well as maritime claims may be brought into concursus in a limitation proceeding.

Subsequently, in *Hartford Accident & Indemnity Co.* v. *Southern Pacific Co.*, 273 U. S. 207, this Court stated that

> "The court of admiralty, in working out its jurisdiction, acquires the right to marshal all claims, whether of strictly admiralty origin or not, and to give effect to them by the apportionment of the res, and by judgment in personam against the owners, so far as the court may decree." (p. 217)

> "* * * All the ease with which rights can be adjusted in equity is intended to be given to the proceeding. It is the administration of equity in an admiralty court * * * It looks to a complete and just disposition of a many cornered controversy * * *" (p. 216)

Again, in *Maryland Casualty Co.* v. *Cushing*, 347 U. S. 409, this Court stated

> "The heart of this system [limitation of liability] is a concursus of all claims to insure the prompt and economical disposition of controversies in which there are often a multitude of claimants." (p. 415)

The opinion of this Court in *British Transport Commission* v. *United States*, 354 U. S. 189, reflects the most recent pronouncement of the Court on the scope of limitation proceedings as providing a forum for adjudication of

all claims arising out of a single disaster. This Court there upheld a decision of the Court of Appeals for the Fourth Circuit that a claimant against the petitioner in a limitation proceeding can be impleaded and cross-claimed against by other claimants in the proceeding. In so deciding this Court made the following comment on the guiding principles as to the scope of limitation proceedings to bring all claims into concursus:

> "* * * But reason compels the conclusion that if the court had power to administer justice in the event the Commission had won, it should have like power when it lost. Whether it is by analogy to Rule 56 or by virtue of Rule 44, or by admiralty's general rules heretofore promulgated by this Court, we hold it a necessary concomitant of jurisdiction in factual situations such as this one that the Court have power to adjudicate all of the demands made and arising out of the same disaster. This too reflects the basic policy of the Federal Rules of Civil Procedure. Admiralty practice, which has served as the origin of much of our modern federal procedure, should not be tied to the mast of legal technicalities it has been the forerunner in eliminating from other federal practices."

The Admiralty Extension Act, even if it had been in existence at the time of the disaster, would not have contributed in any way to give the District Court jurisdiction to deal with the claims of the petitioners, for the Court clearly had jurisdiction under the Limitation of Liability Act and the above cited decisions of this Court construing the application of that act.

Fourth: Petitioners, though attempting to suggest that the Admiralty Extension Act would make general maritime law applicable, in contrast to local law, *i.e.*, the law of Texas, do not offer a scintilla of authority to support

this contention or to show that the general maritime law of proximate cause differs from that of Texas and would produce a different result here.

CONCLUSION

It is submitted that not only are affirmative grounds for the granting of certiorari lacking here, but that there are sound reasons for declining certiorari:

1) the decision below rests entirely upon state decisional law, which governs all claims asserted in the limitation proceeding and which has been properly applied by the Court of Appeals;

2) the purported questions for review were not presented to the courts below, but are raised here for the first time.

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

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Certificate

I hereby certify that I have served a copy of this brief in opposition to petitions for certiorari upon:

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on the day of February, 1962 by depositing the same in regular United States mail, air mail, first class, properly addressed and with postage attached.

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